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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

In re R.O., a Person Coming Under the
Juvenile Court Law.

H040247
(Santa Clara County
Super. Ct. No. 1-10-JD020337)

SANTA CLARA COUNTY
DEPARTMENT OF FAMILY AND
CHILDREN'S SERVICES,

Plaintiff and Respondent,

v.

R.O.,

Defendant and Appellant.

Appellant R.O. (the mother) challenges the juvenile court's termination of her parental rights to her daughter R.O. (the child) and selection of a permanent plan of adoption for the child. She claims that the juvenile court erred in failing to apply the parental relationship exception to adoption. We reject her claim and affirm the juvenile court's order.

I. Background

The child was five years old when she was detained in October 2010 after the mother hit her in the face with a belt with resulting injuries. The mother admitted that she had hit the child with a belt on 20 prior occasions, beginning when the child was two years old. She was adamant that this was “appropriate” “discipline.” The child reported that she had frequently been exposed to seeing her mother having sex with men. The father, a registered gang member with a history of violent crime, was incarcerated at the time of the child’s detention and had been incarcerated for most of the child’s life. The mother and the father had a history of engaging in domestic violence in the child’s presence. The mother reported that the child had been sexually molested by a teenage boy a couple of months prior to her detention.

At the January 2011 jurisdictional and dispositional hearing, both parents submitted on the social worker’s reports. The social worker reported that the child was “mentally and emotionally fragile” and, as a result of the events to which she had been exposed, engaged in “self-injurious behaviors.” The court took jurisdiction over the child and ordered reunification services for the mother. The father, who remained incarcerated, waived reunification services. The court removed the child from parental custody. The mother was granted weekly supervised visitation.

The child was initially placed with a maternal relative caretaker, but in June 2011 the child was placed with paternal relative caretakers who were willing to provide an adoptive home if reunification failed. The mother was frequently late or a no-show for her visits with the child. However, by the time of the February 2012 interim review hearing, the mother was being allowed increased visitation. The child continued to engage in sexualized and self-harming behaviors arising from both her sexual abuse and her exposure to the mother’s sexual activities. She also suffered from posttraumatic stress disorder (PTSD), Pica (eating non-nutritious non-food items), and Trichotillomania

(hair pulling behaviors) associated with the abuse to which she had been subjected. The relative caretakers promptly arranged for the child to obtain therapy for her disorders.

At the June 2012 18-month review hearing, the court returned the child to the mother with family maintenance services including “intensive home-based family services known as wraparound services” After she regained custody of the child, the mother did not cooperate with the social worker’s attempts to make home visits. She essentially limited the social worker to contacting the child at school. The child was frequently tardy to school and was often picked up late from school by the mother, and the child no longer completed her homework assignments. In November 2012, the mother allowed the father to come to the home she shared with the child despite court orders to the contrary and despite the child’s obvious distress and the child’s statements that she did not feel safe with him in the home. While he was there, the child came into the bedroom while the mother and the father were in bed together. The child hit the father. The father responded by hitting the child with a belt in the mother’s presence. The mother did nothing to help the child, but instead sat on the child in an attempt to stop her from crying. The child had difficulty breathing when the mother was sitting on her. The child had a bruise from this incident.

The child was detained on November 12, 2012 as a result of this incident, and a Welfare and Institutions Code section 387¹ petition was filed. The mother was granted supervised visitation twice a week for two hours. The child was soon placed with the paternal relative caretakers she had lived with for the year preceding her brief return to the mother. She loved these relatives and wanted to stay with them if she could not live with the mother.

At the January 2013 contested jurisdictional and dispositional hearing on the section 387 petition, the Department recommended that the child be removed from the

¹ Subsequent statutory references are to this code.

mother's custody and that the court set a section 366.26 hearing. The court sustained the petition, removed the child from the mother's custody, terminated reunification services, and set a section 366.26 hearing for May 2013. Supervised visitation twice a week for two hours was continued for the mother. The child continued to reside with the paternal relative caretakers who wanted to adopt her.

In early February 2013, the child became upset during a visit because she was worried that she would not get to have more visits with the mother. A week later, the child learned that the mother was pregnant with the father's child. This information upset the child. The child was angry at the father and feared him. She was worried that the father would hit the baby. Right after the child learned of the pregnancy, the mother spent a month in jail and was not able to visit the child. Otherwise, the mother regularly visited the child. During their visits, they read, played, ate snacks, and did arts and crafts projects. The mother told the child during visits that she loved her and told the child that the child was creative, smart, artistic, and beautiful. The social worker believed that the mother and the child had "just a friendly relationship." The mother had twice tried to talk about the case in front of the child during visits between January 2013 and September 2013 and had to be redirected by the visitation supervisor.

The child's therapist reported that the numerous placement disruptions had contributed to the child's emotional instability and the mother's abuse and neglect had led to the child's Pica and Trichotillomania. The therapy was helping the child, but she continued to have some difficulties. The May 2013 hearing was continued for a contested hearing. In May 2013, on Mother's Day, the child told the mother that she missed her. In June 2013, the social worker tried to discuss adoption with the child, but the child was "uncomfortable" with that subject. The child was told that if she was adopted she might be able to visit the mother a couple of times a year. In August 2013, the child expressed an interest in playing with the mother's new baby. During another

August 2013 visit with the mother, the child told the mother that she did not want to be adopted.

The Department recommended that the court terminate parental rights and select adoption as the child's permanent plan. The social worker, who testified as an expert at the September 2013 hearing, opined that the benefit of maintaining the child's relationship with the mother did not outweigh the benefit to the child of adoption. This was true because the child was "emotionally fragile," had been in multiple placements, and was finally able to feel safe in the stable environment provided by the prospective adoptive parents. The difference between legal guardianship and adoption was important because it would mean that the child would know that her adoptive home was permanent and that she would never have to return to the unstable and traumatic environment that she had been in with the mother. The mother testified that the child had told her that she did not want to be adopted. The mother felt that the child "will be sad" if she is adopted. The court terminated parental rights and selected adoption as the child's permanent plan. The mother timely filed a notice of appeal.

II. Analysis

The mother claims that the juvenile court erred in failing to apply the parental relationship exception.

"Adoption must be selected as the permanent plan for an adoptable child and parental rights terminated unless the court finds 'a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] (i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.'” (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314 (*Bailey J.*)). This is known as the parental relationship exception.

The proponent of the parental relationship exception bears the burden of producing evidence of the existence of a beneficial parental relationship. Because the existence of such a relationship is a factual issue, the court's finding on this point is reviewed for substantial evidence. (*Bailey J., supra*, 189 Cal.App.4th at p. 1314.) “[A] challenge to a juvenile court’s finding that there is no beneficial relationship amounts to a contention that the ‘undisputed facts lead to only one conclusion.’ [Citation.] Unless the undisputed facts established the existence of a beneficial parental or sibling relationship, a substantial evidence challenge to this component of the juvenile court’s determination cannot succeed.” (*Ibid.*)

Even if the juvenile court finds a beneficial parental relationship, the parental relationship exception does not apply unless the court also finds that the existence of that relationship constitutes a “compelling reason for determining that termination would be detrimental” (§ 366.26, subd. (c)(1)(B).) A juvenile court’s ruling on whether there is a “compelling reason” is reviewed for abuse of discretion as the court must “determine the *importance* of the relationship in terms of the detrimental impact that its severance can be expected to have on the child and . . . weigh that against the benefit to the child of adoption.” (*Bailey J., supra*, 189 Cal.App.4th at p. 1315.)

“‘The factors to be considered when looking for whether a relationship is important and beneficial are: (1) the age of the child, (2) the portion of the child’s life spent in the parent’s custody, (3) the positive or negative effect of interaction between the parent and the child, and (4) the child’s particular needs.’ [Citation.] ‘Interaction between natural parent and child will always confer some incidental benefit to the child. The significant attachment from child to parent results from the adult’s attention to the child’s needs for physical care, nourishment, comfort, affection and stimulation. [Citation.] The relationship arises from day-to-day interaction, companionship and shared experiences. [Citation.] The exception applies only where the court finds regular visits and contact have continued or developed a significant, positive, emotional

attachment from child to parent.’ [Citation.] Evidence of ‘frequent and loving contact’ is not sufficient to establish the existence of a beneficial parental relationship.” (*Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1315-1316.)

The mother maintains that it was “[u]ndisputed” that she had “maintained regular visitation and contact with [the child] and there was a significant, positive emotional attachment from child to parent.” We disagree. While it was undisputed that the mother had maintained regular visitation and contact with the child, the evidence did not reflect that the mother’s presence in the child’s life was a “*positive* emotional attachment” for the child. (*Italics added.*) The child has been repeatedly traumatized by the mother’s conduct. The mother physically abused the child for several years before the child was removed from her care. As a result of this physical abuse, the child was seriously traumatized, and this abuse caused the child to engage in a variety of troubling self-harming behaviors. Despite intensive services for more than 18 months, soon after the mother regained custody of the child, the mother permitted the child to be physically abused yet again. After the child was again removed from the mother’s care, the mother repeatedly tried to talk to the child about the case during visits. And the mother’s continued relationship with the father led to more emotional upheaval for the child. The mother’s conduct has continued to cause the child emotional trauma even though the mother has been limited to supervised visits. That is hardly an argument in favor of continuing a relationship between the child and the mother. While the child clearly loves the mother, it is evident that her relationship with the mother is neither positive nor beneficial to the child.

The mother claims that a continued relationship between her and the child is necessary to help the child overcome her “mental health issues.” We reject this claim. The mother caused the child’s “mental health issues.” Her absence from the child’s life would eliminate the source of the child’s emotional trauma and permit the child, through therapy, to overcome that trauma while enjoying a stable, safe, and permanent home with

adoptive parents. The mother also contends that the length of time the child spent in the mother's custody prior to her initial removal weighs in favor of continuing the parental relationship. Not so. The mother physically abused the child for the majority of the child's life prior to the child's removal. The length of this abusive relationship does not weigh in favor of its continuation. The mother asserts that the relationship should be continued because the child looked forward to seeing the mother and enjoyed the visits. She rejects the social worker's testimony that the relationship was merely a friendly one, not a parental relationship, but the juvenile court was entitled to credit the social worker's testimony.

Furthermore, any benefit that the child might gain from continuing a relationship with the mother was far outweighed by the benefit to the child of obtaining a permanent, stable, and safe adoptive home. The mother claims that the child was opposed to adoption and would be traumatized if the parental relationship was severed. She argues that legal guardianship could have provided the necessary home for the child without termination of parental rights. The juvenile court, in the exercise of its discretion, could have readily concluded otherwise. The child's only statements about adoption were in the mother's presence, and she was noticeably uncomfortable discussing the subject. However, she was quite clear that she loved the prospective adoptive parents and wanted to live with them. Given the emotional trauma that the child had suffered from multiple placements, it was critical to the child's mental health that she be given a permanent placement that would allow her to be secure in the fact that she would never again face the trauma that she had experienced in the mother's care. Only adoption could offer that kind of permanency. We can find no abuse of discretion in the juvenile court's determination that the benefits of adoption outweighed any detriment to the child from the termination of the parental relationship.

III. Disposition

The order is affirmed.

Mihara, J.

WE CONCUR:

Bamattre-Manoukian, Acting P. J.

Grover, J.